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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

W.B. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B210265

(Los Angeles County
Super. Ct. No. CK61079)

ORIGINAL PROCEEDING; Petition for extraordinary writ. Sherri Sobel,
Juvenile Court Referee. Petition for extraordinary writ denied.

Law Offices of Alex Iglesias, Steven D. Shenfeld and Karen Rose for Petitioner
W.B.

Law Office of Timothy Martella, Los Angeles Dependency Lawyers, Inc., Eliot
Lee Grossman and Trane M. Hunter for Petitioner H.P.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Frank J. DaVanzo, Principal Deputy County Counsel, for Real Party in Interest.

Children's Law Center of Los Angeles, Patricia G. Bell and Melissa Heath-Rondilla, for Minor.

* * * * *

W.B. (father) and H.P. (mother), the parents of K.B., have filed petitions for extraordinary writs (Cal. Rules of Court, rule 8.452) challenging an order of the juvenile court terminating their family reunification services with their daughter, K.B., and setting the underlying dependency proceeding for a hearing pursuant to Welfare and Institutions Code section 366.25.¹ We deny the petition.

FACTS AND PROCEDURAL HISTORY

K.B. is the parents' second child together. Their first child, P.B., was a dependent child of the juvenile court at the time K.B. was born in February 2007. Prior to K.B.'s birth, mother told a hospital social worker that she was bipolar, and the social worker ordered a psychiatric examination for mother. The hospital social worker also relayed this information to the Los Angeles County Department of Children and Family Services (DCFS), which placed a "hospital hold" on K.B. DCFS in turn informed the hospital that both mother and father had a history of substance abuse and mental health issues and had an open case with DCFS.

Facts relating to P.B.

DCFS had detained one-month-old P.B. on October 5, 2005. At that time, mother was incarcerated and father was living with P.B. under what DCFS described as "deplorable conditions" in a camper. When the DCFS social worker arrived to detain P.B., father appeared to be intoxicated and P.B. had been left unattended within reach of

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

a pit bull dog. The camper was found to be in a filthy and unsanitary condition, and P.B.'s diaper was soaked with urine and feces. On February 15, 2006, the juvenile court sustained allegations in a section 300 petition that father had created a detrimental and endangering home for P.B., had a history of alcohol and drug abuse, had been treated for depression, and had an extensive criminal history. Mother likewise had a history of using illicit drugs, including methamphetamine and heroin, had been diagnosed with bipolar disorder, paranoid schizophrenia and multiple personality disorder for which she was prescribed medication, and had a lengthy criminal history.²

In its February 15, 2006, disposition order in the P.B. case, the parents were ordered to participate in parenting classes, individual counseling and random drug and alcohol testing once per week. If a parent tested "dirty" or had an unexcused missed test, the parent was ordered to participate in a substance abuse program. The parents had undergone an Evidence Code section 730 evaluation by Dr. Suzanne Dupée in January 2006. For reasons we discuss more fully below, the court found that evaluation lacking and ordered each parent to obtain another psychiatric evaluation and comply with all recommendations of the evaluator.

On November 3, 2006, the juvenile court found that the parents had only partially complied with the court-ordered case plan, and terminated reunification services for both parents. On July 30, 2007, the juvenile court terminated the parental rights of both parents to P.B. We affirmed the order as to father on March 28, 2008. (*In re P.B.*, DCFS v. W.B. (Mar. 28, 2008) B202791, [nonpub. opn.].) We dismissed mother's appeal from the order on November 26, 2008.

Facts relating to K.B.

DCFS filed a section 300 petition with respect to K.B. on February 14, 2007. At the jurisdiction hearing held July 31, 2007, the juvenile court sustained allegations that the parents were incapable of caring for K.B. for the following reasons: (1) mother had a history of substance abuse that periodically rendered her incapable of caring for K.B.; (2)

² Mother had used 11 different names and had six social security numbers.

mother had a chronic mental illness (bipolar disorder, paranoid schizophrenia and multiple personality disorder), had demonstrated numerous mental and emotional problems, had not taken prescribed psychotropic medication, and had failed to follow her psychiatric treatment plan; (3) father had a history of substance abuse; (4) father had a chronic mental illness (depression), demonstrated numerous mental and emotional problems, did not take prescribed psychotropic medication, and had failed to follow his psychiatric treatment plan. Over the objection of DCFS, the juvenile court ordered that the parents receive family reunification services. The parents were ordered to participate in individual counseling, parenting classes, random alcohol and drug testing. The court further ordered that the parents be evaluated by a psychiatrist and take all medications prescribed by the psychiatrist.

Due to circumstances we need not detail here, the reunification period in K.B.'s case extended over 16 months following the date she was initially detained. On January 15, 2008, the court set the matter for a combined section 366.21, subdivision (e) [six-month] and (f) [12-month] hearing, to be held on June 26, 2008. In a report prepared for the June 26, 2008 hearing, DCFS social worker Amarlyn Houston reported that mother had successfully completed a substance abuse program through AADAP Inc. (AADAP). While enrolled in that program, mother had received individual therapy with a licensed therapist, but was unable to continue that therapy once she was discharged from the program in March 2008. In early February 2008, mother's therapist, Etsuko Nagatoni, had given mother a list of follow-up referrals. Ms. Nagatoni opined that mother would benefit from therapy services that incorporated various parenting skills and techniques, because mother exhibited "child-like behaviors" during therapy sessions. (Mother had previously completed a parenting class in 2006.) As of June 25, 2008, mother had not yet enrolled in another individual counseling program. Mother had submitted to random drug testing and had tested negative with the exception of two "no-shows" on May 9 and June 16, 2008. Mother informed DCFS that in February 2008, she had submitted to a psychiatric evaluation with Dr. William Vicary at the Hollywood Health Clinic. Mother had yet to provide DCFS with documentation of the evaluation. Mother told Ms.

Houston she needed to “find the form” and would provide it to DCFS when she did so. Ms. Houston, also attempted to reach Dr. Vicary, without success.³

Father successfully completed a substance abuse program in November 2007 through the Didi Hirsch Center. Father continued to submit to random drug tests, and continued to test negative. Father enrolled in weekly therapy sessions with Ms. Nagatoni at AADAP, but his attendance was poor. Father also stated that he had undergone a psychiatric evaluation with Dr. Vicary in February 2008, but he had not yet provided DCFS with documentation of the evaluation. Father “continuously stated that the documentation that he has is not legible and he needs to get things corrected on the form before he submits it to [DCFS].”

Both parents attended twice-weekly visits with K.B., and DCFS reported that the visits generally went well. The visits were monitored by Ms. Houston and a DCFS case aide. Both parents acted appropriately with K.B., although mother tended to “become emotional and overwhelmed during the visits when she feels that the minor is not paying a lot of attention to her and hands her off to the father.” Father played with K.B., but “he too will hand the minor back to the mother when he is tired. During over 90% of the monitored visits, father spends a vast majority of his time laying [*sic*] on the floor as he has stated that he does not feel well or had a rough night.” Ms. Houston expressed concern about the parents’ “ability to properly care for the child and interact with her consistently over time, and their appearing to see the minor as a pet or a doll who they fight over whose turn it is to take care of her.”

DCFS recommended that the parents’ reunification services be terminated, based on the following: their “minimal progress” toward case plan goals, despite having been given numerous referrals; their failure to reunify with P.B.; their failure to provide proper documentation of their psychiatric evaluations, “despite previous mental health diagnoses

³ Mother did eventually locate the form prepared by Dr. Vicary. In a letter dated October 10, 2008, mother notified this court that she had filed a section 388 petition based on Dr. Vicary’s conclusion that mother was ““psychiatrically stable w/o meds [at this time].”” The “evaluation” by Dr. Vicary is cryptic and would be of little assistance to a court attempting to evaluate mother’s ability to parent K.B.

and prescription of psychotropic medication;” their failure to enroll in and attend individual therapy sessions; and their failure to demonstrate that “they can provide the attention, common sense and nurturing necessary to parent a child.”

At the June 26, 2008, hearing to consider the termination of family reunification services, Ms. Houston testified that she had been the social worker assigned to the case since the birth of P.B. Ms. Houston had not yet received proof that either mother or father had completed individual counseling. The court ordered the parents to undergo psychological evaluations in February 2006, but the parents had not provided Ms. Houston with the results of any such evaluations. Under cross-examination by mother’s counsel, Ms. Houston testified that she had given the parents a list of referrals for individual therapy in July 2007, but did not enroll them in therapy. At that time, mother was receiving individual therapy as part of another program, but father was not receiving individual therapy at all. Mother’s therapist at AADAP had also given mother a list of referrals for individual therapy. Ms. Houston spoke with mother in January 2008, but did not provide mother with any additional referrals because mother said she already had more than enough referrals. Ms. Houston also followed up several times with the therapist who had provided mother with additional referrals; “at that time, it was up to mother to follow through.” Ms. Houston also gave mother referrals for a mental health evaluation, most recently in August 2007. However, the agencies Ms. Houston contacted said mother would have to make her own appointment for the evaluation.

On cross-examination by K.B.’s counsel, Ms. Houston testified that she had given the parents referrals for psychiatric evaluations on numerous occasions, but they had not asked her for any referrals after August 2007, even though she saw the parents twice a month. Each time she met with the parents, she would ask if they needed additional referrals.

Mother testified about her participation in and completion of her substance abuse program, at which she received counseling in parenting, drug treatment education, and anger management. Mother also completed a 16-week parenting class outside of her substance abuse program. However, she denied that her counselor, Ms. Nagatoni, had

ever given her additional referrals for any outside program. Mother called every facility to which she had been referred for a psychiatric evaluation, but was not successful in obtaining a psychiatric evaluation. One facility had a six-month waiting list. She had never gone over the list of referrals with Ms. Houston to obtain help in getting into an individual counseling program. Mother had obtained a recent mental health evaluation in February 2008 at the Sunset Hollywood Free Clinic, to which she and father were referred by a friend. She saw Dr. Vicary, but he did not tell her she needed to be on psychotropic medication. Mother did not think she should be on medication because “most of the psychotropic medications I’ve taken when I was younger makes the anger more aggressive, and I’m afraid for my children when I’m on the medication.” Mother claimed she had documentation of her psychiatric evaluation with Dr. Vicary, but had left the paperwork at home. Mother was questioned about her application for Supplemental Social Security (SSI). Mother claimed she had applied for SSI in order to get a psychiatric evaluation. However, after her application had been rejected, mother filed a “Request for Reconsideration” in which she stated she had “not been able to get or maintain a job for almost six years due to my mental illness, and have not been maintaining appoints [sic] without reminders or an appointment book.” Mother admitted she had in fact held a job from 1997 to 2002, but claimed otherwise because “the person who was advocating told me to write this and said that it would be the right thing to write.”

Father also testified that he had undergone a psychiatric evaluation by Dr. Vicary, who had provided him with a handwritten note. Father denied he had been diagnosed with a mood disorder in the past, but admitted he had been treated for depression in 1999 and had received medication for this illness. However, he experienced side effects from the medication and stopped taking it in 2001. Father conceded that the case plan required him to take psychotropic medications, but said he would not take such medication--“No, not again. Ever.” When asked if he would take the medications if it were necessary for him to reunify with K.B., father replied, “It all depends.”

At the conclusion of testimony, the juvenile court remarked that the parents had received a total of 34 months of reunification services, beginning with P.B.'s case in 2005. The court noted that at each stage of the proceeding, the parents knew they were required to provide "a letter from a therapist or a letter from a psychiatrist indicating . . . how these parents are doing and what progress they have made." Each time, information about the "therapeutic input" has come instead from the parents. The parents knew, throughout each case, "that they needed to provide, A, a letter from a psychiatrist signed by a psychiatrist stating there has been an evaluation of each one of these parents and they, A, do not require any medication; or B, these are the medications that they are being prescribed; and C, they are or are not willing to take them We don't have it yet again. We have no letter from a therapist of any kind, at any time, regardless of the telephone calls that the Department has made, with the parents knowing, through two children, that they needed to provide this information to the Department. We don't have a letter. We don't have anything from a licensed therapist saying that the parents have made any progress at all in the issues that brought this child before the court" The mental health issue was particularly significant with respect to mother; either mother had no mental issues, as she claimed, or "mother is lying to the Social Security people, the general relief people" The court also noted that during the time frame mother outlined in her SSI application, mother "managed to be arrested four times . . . under 11 different names."

At the conclusion of the hearing, the court found that both parents had regular and consistent contact with K.B. However, the court said it could not make the required finding that the parents had made significant progress in resolving the problems that led to K.B.'s removal, or had demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for K.B.'s safety, protection, physical and emotional well-being. The court found, by a preponderance of the evidence, that returning K.B. to the parents at that time would create a substantial risk of danger to K.B.'s physical or emotional well-being, and it could not make the requisite findings to extend reunification services to the 18-month date. The court also found, by clear and

convincing evidence that DCFS had provided the parents with reasonable reunification services. The court terminated both parents' family reunification services and set the matter for a hearing to consider the termination of their parental rights.

DISCUSSION

We review the juvenile court's order under the substantial evidence standard, viewing the evidence in a light most favorable to the dependency court's findings. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Substantial evidence is evidence that is "reasonable, credible and of solid value" that would allow a reasonable trier of fact to reach the same conclusion as the juvenile court. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) Where there is any substantial evidence to support the court's order, contradicted or not, we must affirm the dependency court's decision. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

In this case, substantial evidence supports the court's rulings that (1) DCFS provided reasonable reunification services to both parents, (2) it would be detrimental to return K.B. to the parents' care; and (3) because it was not likely that K.B. could be returned to the parents prior to the 18-month deadline (§ 366.22, subd. (a)), it would not further extend the parents' reunification services.

The parents received adequate reunification services.

"[T]he focus of reunification services is to remedy those problems which led to the removal of the children.' [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the

services were reasonable under the circumstances.” (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

Father contends the court erred when it found DCFS had provided him with reasonable reunification services, because Ms. Houston simply provided him with a list of referrals for individual counseling in August 2007, then “wait[ed] to see what happened.” Father contends it was “not reasonable to expect [him] to secure his own counseling resources and then [provide] letters to the CSW memorializing his attendance.” Mother contends Ms. Houston did not make reasonable efforts to obtain mother’s psychiatric evaluation from Dr. Vicary, and did not make reasonable efforts to assist her in finding an agency to provide her with individual counseling after she completed her drug rehabilitation program.

The parents’ claims are without merit. A social service agency has an obligation to “assist parents with inadequate parenting skills in remedying the sources of the problem, not to eradicate the problem itself.” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) In September 2006, nearly two years before the court terminated reunification services in this case, Ms. Houston reported that she had provided the parents with referrals for mental health services on several occasions, and had called a number of mental health facilities on the parents’ behalf, only to be told that the parents needed to go to the facilities personally and request services, which were free of charge. Ms. Houston in fact reported that both parents had “tried their best to enroll in court ordered programs.” The fact that the parents had enrolled in and successfully completed substance abuse and parenting programs demonstrates that, if the parents made the necessary effort, they had the ability to seek out court-ordered programs based on referrals provided by Ms. Houston.

It would have been detrimental to return K.B. to the parents’ care.

The pivotal issue in this case is whether the parents had mental health issues that would prevent them from parenting K.B. full-time. The court’s focus on this issue is understandable. It was mother’s revelation that she had been diagnosed as a teenager with several mental illnesses that instigated K.B.’s original detention by DCFS. Father

also stated that he had been diagnosed with depression and had been prescribed several medications that he no longer took, and insisted he would never take again.

In January 2006, the parents underwent an Evidence Code section 730 evaluation by Dr. Suzanne Dupée. Dr. Dupée opined the parents were “an interesting couple who were both raised in highly dysfunctional households. They both have a long history of serious drug abuse and extensive criminal backgrounds. They seem to live on the edge, are street savvy and survivors.” Dr. Dupée concluded that neither parent suffered from any major mental illness. However, DCFS took issue with Dr. Dupée’s conclusions, noting that Dr. Dupée had not done any psychological testing on the parents, and appeared to have taken many of the parents statements at face value, even though those statements contradicted other statements they had made to the social worker. The juvenile court clearly did not give Dr. Dupée’s evaluation much weight; as part of the disposition order in P.B.’s case, the court ordered the parents to undergo another psychiatric evaluation and comply with all recommendations made by the evaluator.

Twenty-eight months later, as their reunification services with K.B. were about to be terminated, the parents still were not able to produce documentary proof that they had undergone psychiatric evaluations that would help the court evaluate whether the parents had become sufficiently stable to be full-time parents to K.B. Given the parents’ mental health histories, the court properly concluded that it would be detrimental to return K.B. to their care at the 12-month hearing without receiving further information about the parents’ mental stability.

The parents were not entitled to additional reunification services.

Because K.B. was under the age of three at the time she was detained, the parents were entitled to a maximum of only six months of reunification services, measured from the date the child entered foster care. (§ 361.5, subd. (a)(2).) The juvenile court has the discretion to extend services for an additional six months if the court finds there is a substantial probability that the child will be returned to the parent within the extended period. (§ 361.5, subd. (a)(3).) A parent is entitled to extended services only under

limited circumstances, including the parent's "significant progress" in resolving the problems that led to the child's removal. (§ 366.21, subd. (g)(1)(B).)

Although the hearing below was denominated a combined six-month 12-month hearing, the parents had actually received over 16 months of reunification services with K.B. and 34 months of services with P.B. and K.B. combined. Thus, they would have been entitled to, at the most, two additional months of services. At the time of the hearing below, the parents had had 16 months of monitored visits with K.B., but had not progressed to the point where DCFS felt the parents could have even unmonitored or overnight visits. Given the parents' lack of progress in this area, it was reasonable for the court to conclude that it could not return K.B. to the parents within the ensuing two months.

DISPOSITION

The petition for extraordinary writ is denied and the stay order issued on September 19, 2008, is vacated. Pursuant to California Rules of Court, rule 8.264(B)(3), this opinion is made final forthwith.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD